

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 4:07CR159-M

JEROME MITCHELL

DEFENDANT

**ORDER DENYING MOTION [276] FOR RESEARCH MATERIAL;
DENYING MOTION [312] FOR APPOINTMENT OF NEW COUNSEL FOR APPEAL;
DISMISSING WITHOUT PREJUDICE MOTIONS [297], [345]
TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER 28 U.S.C. § 2255**

This matter comes before the court on the four remaining motions filed by defendant Jerome Mitchell (“Mitchell”) in this case: (1) Motion for Research Materials; (2) Motion to Appoint New Counsel for Appeal; (3) Motion for Relief under 28 U.S.C. § 2255; and (4) Motion to Supplement Motion for Relief under 28 U.S.C. § 2255. For the reasons set forth below, the four motions will be denied.

Motion [276] for Research Materials

Mitchell has requested access to a law library and research materials with which to prosecute the direct appeal of his conviction. The government must provide prisoners seeking to make constitutional claims with “adequate law libraries or adequate assistance from persons trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). As the court has appointed counsel to prosecute Mitchell’s appeal, he is not also entitled to access to a law library and research materials, and his motion seeking such materials will be denied. *Id.*

Motion [312] to Appoint New Counsel for Appeal

Although the court has appointed counsel to represent Mitchell on direct appeal, he requests that the court dismiss that attorney and appoint new counsel, arguing that he and his

appointed attorney have developed a “conflict and irreconcilable differences.” Mitchell has not identified what the conflict or differences with his attorney might be. The Sixth Amendment does not confer upon a criminal defendant the right to appointed counsel – or even retained counsel – of his choosing. *United States v. Brown*, 591 F.2d 307, 310 (5th Cir. 1979). As Mitchell has not presented any argument or facts to support his request for different counsel, the request for new counsel will be denied.

Motions [297], [345] Seeking Relief Under 28 U.S.C. § 2255

Mitchell has, through counsel, appealed his conviction and sentence to the Fifth Circuit Court of Appeals, and that appeal is currently pending. A criminal defendant may not seek to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 until his conviction has been affirmed on direct appeal. *Fassler v. United States*, 858 F.2d 1016, 1019 (5th Cir. 1988) (citing *Jones v. United States*, 453 F.2d 351, 352 (5th Cir. 1972)). This court dismissed another of Mitchell’s requests for relief under 28 U.S.C. § 2255 on November 2, 2009, for that reason. Mitchell’s conviction is currently on appeal; as such, his requests [297]¹, [345] for relief under 28 U.S.C. § 2255 are premature and will be dismissed without prejudice to his ability to seek relief under § 2255 after the Fifth Circuit rules on his direct appeal.

¹Mitchell did not refer to § 2255 in his motion [297] filed on June 4, 2009; however, in that motion he seeks relief for alleged violations of his Sixth Amendment right to counsel due to ineffective assistance of counsel. These allegations are in the nature of § 2255 relief and have been interpreted as such under the liberal standard of review for *pro se* pleadings set forth in *Haines v. Kerner*, 404 U.S. 519 (1972).

In sum, the defendant's motion [276] for research materials and motion [312] for new counsel on appeal are **DENIED**, and his motions [297], [345] to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 are **DISMISSED** without prejudice.

SO ORDERED, this the 10th day of November, 2009.

/s/ MICHAEL P. MILLS

CHIEF JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF MISSISSIPPI